

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Douglas Johnson

(b) County of Residence of First Listed Plaintiff Bucks
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Stanley B. Cheiken, 2617 Huntingdon Pike, Huntingdon Valley, PA 19006
215-572-8600

DEFENDANTSRightway Courier, LLC, and
Richard Forsyth

County of Residence of First Listed Defendant Bucks
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Fair Labor Standards Act, 29 U.S.C. Section 201, et seq

Brief description of cause:

Misclassification of non-exempt employee, failure to pay overtime

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
25,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 33 Dawn Road, Levittown, PA 19056
 Address of Defendant: 146 Alberts Way, Langhorne, PA 19047
 Place of Accident, Incident or Transaction: Bucks County, PA

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|-----------------------------|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 3/6/19 [Signature] 62106
 Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☒ 11. All other Federal Question Cases

(Please specify): Fair Labor Standards Act

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability – Asbestos
- ☐ 9. All other Diversity Cases

(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, _____, counsel of record or pro se plaintiff, do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: _____ [Signature] Attorney I.D. # (if applicable)
 Attorney-at-Law / Pro Se Plaintiff

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**
CASE MANAGEMENT TRACK DESIGNATION FORM

DOUGLAS JOHNSON

Plaintiff,

v.

RIGHTWAY COURIER, LLC; and
RICHARD FORSYTH

Defendant.

CIVIL ACTION

No.

JURY TRIAL DEMANDED

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (x)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

3/6/19
Date

(215) 572-8600
Telephone

Stanley B. Cheiken

Attorney-at-law

(215) 572-7838
Fax Number


Attorney for Plaintiff

sbc@cheikenlawfirm.com
Email Address

3. Defendant Richard Forsyth (“Forsyth”) is an adult individual residing at 146 Alberts Way, Langhorne, PA 19047. At all times relevant hereto, Forsyth has been the managing member of Rightway.

JURISDICTION AND VENUE

4. The Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 because the claims herein arise under the laws of the United States, specifically the Fair Labor Standards Act (“FLSA”). The Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. §1367 because the claims arise out of the same set of occurrences and are based upon a common nucleus of operative facts.

5. Venue lies within this Judicial District pursuant to 28 U.S.C. §1391(b)(1) and (2) because the Defendants reside herein and the events giving rise to this lawsuit occurred herein.

FACTUAL BACKGROUND

6. Johnson commenced his employment with Rightway as a Dispatcher on or about August 31, 2015.

7. At the time of his hire, and for the remainder of his employment with Rightway, Johnson reported directly to Forsyth, the owner of Rightway.

8. At the time of his hire, it was agreed that Johnson would be paid a weekly salary of \$800.

9. After approximately one year, Johnson’s salary was increased to \$840 per week.

10. At the time of his hire, and for the remainder of his employment, at the direction and insistence of Forsyth, Johnson was misclassified as an employee who was exempt from receiving overtime pay.

11. In fact, under the requirements of the law, Johnson was not an exempt employee and was entitled by law to overtime pay when he worked in excess of forty hours in a given workweek.

12. Throughout his employment, Johnson was routinely required to work in excess of forty hours per workweek.

13. Nevertheless, Johnson was never paid for his hours when he worked more than forty hours in a given workweek.

**COUNT I
VIOLATION OF THE FLSA
FAILURE TO PAY OVERTIME**

14. The averments contained in paragraphs 1 through 13 above are incorporated herein by reference as though set forth at length.

15. At all times relevant hereto, Rightway was an “employer” within the meaning of the FLSA.

16. At all times relevant hereto, Johnson was an “employee” within the meaning of the FLSA.

17. Under the FLSA, an employer must pay an employee at least one and one half times his or her base rate for each hour worked in excess of forty hours per workweek.

18. Rightway violated the FLSA by intentionally misclassifying Johnson as an exempt employee, and by failing to pay Johnson at least 1.5 times his regular rate of pay for the hours he worked in excess of 40 in a workweek.

19. As a direct and proximate result of Rightway's unlawful conduct, Johnson has suffered damages in the amount of \$10,765.50 in unpaid wages during the three year period prior to the filing of this lawsuit.

20. Rightway's conduct as aforesaid was willful and was not based upon any reasonable interpretation of the law.

21. Additionally, Johnson is entitled to liquidated damages in an amount equal to the unpaid wages due to him.

22. Under the FLSA, in addition to unpaid wages and liquidated damages, Johnson is also entitled to an award of reasonable attorney's fees.

23. Forsyth is personally liable for Rightway's violation of the law because he is the owner of Rightway, he exercised day-to-day control of the operations of Rightway, and he was personally responsible for the supervision and payment of Rightway's employees.

WHEREFORE, plaintiff Douglas Johnson demands judgment in his favor and against defendants Rightway Courier, LLC and Richard Forsyth, jointly and severally, in the amount of \$10,765.50 in compensatory damages, and \$10,765.50 in liquidated damages, together with prejudgment interest, reasonable attorney's fees and costs of suit.

COUNT II
VIOLATION OF THE PENNSYLVANIA MINIMUM WAGE ACT
FAILURE TO PAY OVERTIME

24. The averments contained in paragraphs 1 through 23 above are incorporated herein by reference as though set forth at length.

25. At all times relevant hereto, Rightway was responsible for paying wages to Johnson.

26. At all times relevant hereto, Johnson was an "employee" of Rightway within the

meaning of the Pennsylvania Minimum Wage Act.

27. Under the Pennsylvania Minimum Wage Act, an employer must pay an employee at least one and one half times his or her base rate for each hour worked in excess of forty hours per workweek.

28. Rightway violated the Pennsylvania Minimum Wage Act by not paying Johnson at least 1.5 times his base rate when he worked in excess of 40 hours per workweek.

29. As a direct and proximate result of Rightway's unlawful conduct, Johnson has suffered damages in the amount of \$10,765.50 in unpaid overtime premium during the three year period prior to the filing of this lawsuit.

30. Rightway's conduct as aforesaid was willful and was not based upon any reasonable interpretation of the law.

31. Under the Pennsylvania Minimum Wage Act, in addition to unpaid wages, Johnson is also entitled to an award of reasonable attorney's fees.

WHEREFORE, plaintiff Douglas Johnson demands judgment in his favor and against defendant Rightway Courier, LLC, in the amount of \$10,765.50 in compensatory damages, together with prejudgment interest, reasonable attorney's fees and costs of suit.

COUNT III
VIOLATION OF THE PA WAGE PAYMENT AND COLLECTION LAW
FAILURE TO PAY WAGES OWED

32. The averments contained in paragraphs 1 through 31 above are incorporated herein by reference as though set forth at length.

33. Rightway violated the PA Wage Payment and Collection Law by not paying Johnson wages owed as aforesaid in the amount of \$10,765.50.

34. Pursuant to the PA Wage Payment and Collection Law, Johnson is entitled to

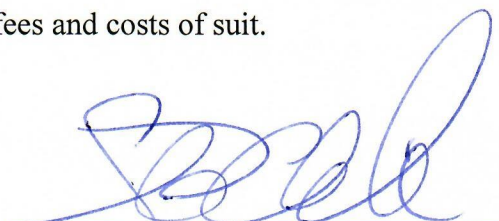
liquidated damages in the amount 25% of the total unpaid wages, or an additional \$2,691.38.

35. Under the PA Wage Payment and Collection Law, in addition to unpaid wages, Johnson is also entitled to an award of reasonable attorney's fees

36. At all relevant times, Forsyth was the decisionmaker on behalf of Rightway and Forsyth's conduct was willfully calculated to avoid paying wages due to Johnson. As such, Forsyth is individually liable under the PA Wage Payment and Collection Law.

WHEREFORE, plaintiff Douglas Johnson demands judgment in his favor and against defendants Rightway Courier, LLC and Richard Forsyth, jointly and severally, in the amount of \$10,765.50 in compensatory damages and \$2,691.38 in liquidated damages, together with prejudgment interest, reasonable attorney's fees and costs of suit.

Date: March 6, 2019


STANLEY B. CHEIKEN, ESQUIRE

2617 Huntingdon Pike
Huntingdon Valley, PA 19006
(215) 572-8600

Attorney for Plaintiff